Not To Be Published:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

PAUL ALLISON, Plaintiff, vs. WELLMARK, INC., d/b/a/ BLUE CROSS AND BLUE SHIELD OF IOWA, Defendant.	No. C00-3015-MWB **MEMORANDUM OPINION AND ORDER REGARDING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND PLAINTIFF'S MOTION TO REMAND**

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I. INTRODUCTION AND BACKGROUND

A. Procedural Background

On February 3, 2000, plaintiff Paul J. Allison filed a petition for declaratory judgment in the Iowa District Court In And For Franklin County seeking a declaration that defendant Wellmark, Inc. d/b/a Blue Cross and Blue Shield of Iowa ("Wellmark") had no right of subrogation to the proceeds of plaintiff Allison's underinsured motorist coverage. Defendant Wellmark removed this case to this court on February 18, 2000, pursuant to 28 U.S.C. § 1441. On February 28, 2001, defendant Wellmark filed its answer and prayed for a declaration from the court that Wellmark's subrogation rights extend to plaintiff Allison's underinsured motorist coverage.

On April 12, 2001, plaintiff Allison filed his Motion For Summary Judgment and defendant Wellmark filed its Motion For Partial Summary Judgment. The parties' cross-motions for summary judgment centered on the central issue in this case, whether defendant Wellmark is entitled to subrogation of plaintiff Allison's right to recovery of underinsured motorist coverage proceeds.

On July 30, 2001, after oral arguments on the parties' cross-motions for summary judgment, the court concluded that Wellmark's interpretation of the Plan's subrogation provision was not unreasonable. Thus, the court concluded that defendant Wellmark was entitled to subrogation of plaintiff Allison's right to recovery of underinsured motorist coverage proceeds and granted Wellmark's Motion for Partial Summary Judgment and denied Allison's Motion for Summary Judgment. This ruling would have been the final judgment in the case but for the fact that Wellmark did not seek summary judgment on the question of whether it owed Allison a reasonable attorney's fee in connection with his recovery of the underinsured motorist proceeds at issue in this litigation.

On January 8, 2002, the United States Supreme Court issued its decision in *Great-*

West Life & Annuity Ins. Co. v. Knudson, 122 S. Ct. 708 (2002).[1] On March 1, 2002, in light of the *Knudson* decision, Wellmark requested that it be granted leave to amend its answer to include a request for the imposition of a collective trust on the proceeds of the underinsured motorist coverage and an award of interest. On July 1, 2002, the court found that Wellmark had established good cause to amend its answer to take the change in the decisional law into account and granted Wellmark's request for leave to amend its answer.

On August 29, 2002, defendant Wellmark filed its Motion for Partial Summary Judgment. In its motion, defendant Wellmark seeks summary judgment on the issue of its entitlement to imposition of a constructive trust. Plaintiff Allison filed a timely response to defendant Wellmark's motion in which he argues that the circumstances of this case do not establish Wellmark's entitlement to a constructive trust under Iowa law. Allison also argues that the court lacks subject matter jurisdiction over this matter.

On September 13, 2002, Plaintiff Allison filed a motion to remand which is grounded

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[1] In *Knudson*, the Court addressed the issue of the extent to which ERISA authorizes a plan administrator to enforce a plan's reimbursement provision. Janette Knudson, a beneficiary of an ERISA-governed employee welfare benefit plan, was severely injured in a car accident. *Id.* at 711. She was covered by an employee benefit plan. The plan included a reimbursement provision similar to the one at issue in the present case; the provision stated that the plan had "'the right to recover from the [beneficiary] any payment for benefits' paid by the Plan that the beneficiary is entitled to recover from a third party." *Id.* Knudson filed a state tort suit against the manufacturer of the car in which she was riding and other tortfeasors. The parties subsequently negotiated a settlement and the tortfeasors paid the settlement money into a Special Needs Trust and gave the remainder to Knudson's attorney, who tendered a check in the amount of $13,828.70 to Great-West. Instead of cashing its check, however, Great-West filed suit, under ERISA § 502(a)(3), seeking to enforce the reimbursement provision of the plan and recover from the settlement proceeds the $411,157.11 it had paid for Knudson's medical treatment. The Supreme Court held that ERISA § 502(a)(3) did not authorize the action because the plan was seeking legal relief. *Id.* at 719. The Court, however, suggested that if the plan administrator had been seeking an equitable lien on particular property in the hands of the plan beneficiary, such a suit would sound in equity and would be authorized by § 502(a)(3). *Id.* at 714-15.

on his argument that the court does not have subject matter jurisdiction over this matter. Defendant Wellmark filed a timely response to Allision's motion to remand in which it asserts that because plaintiff Allison's claims are completely preempted by ERISA, the court has subject matter jurisdiction over the case.

The court heard telephonic oral arguments on defendant Wellmark's Motion for Partial Summary Judgment on October 8, 2002. At the oral arguments, plaintiff Allison was represented by counsel Raymond P. Drew of Drew Law Firm, Hampton, Iowa. Defendant Wellmark was represented by counsel David Swinton of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C., Des Moines, Iowa.

The court turns first to a discussion of the undisputed facts as shown by the record and the parties' submissions, then to consideration of the standards applicable to the motion for summary judgment, and, finally, to the legal analysis of whether defendant Wellmark is entitled to summary judgment on the issue of its entitlement to imposition of a constructive trust. The court will then address plaintiff Allison's motion to remand.

B. Factual Background

The record reveals that the following facts are undisputed. Plaintiff Paul J. Allison was an employee of the Curries Company on June 3, 1990. As an employee of the Curries Company, Allison had health care benefits through the Curries Company health benefits plan ("The Plan"). The Plan is self-funded by the Curries Company and is maintained pursuant to an Alliance Select Benefit Certificate. Defendant Wellmark provides certain administrative services and stop-loss coverage to the Curries Company with respect to the Plan pursuant to an Administrative Services and Financial Agreement. The Plan is an employee welfare benefit plan governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq*. ("ERISA"). Plaintiff Allison was furnished with a copy of the Plan.

On June 3, 1999, plaintiff Allison was severely injured in an automobile accident. Plaintiff Allison was a passenger in the automobile at the time of the accident. The accident was caused by the driver of the automobile in which Allison was a passenger. The driver of the automobile carried automobile insurance with the Hartford Insurance Company with a liability limit of $10,000. Plaintiff had automobile insurance with the Prudential Insurance Company which provided underinsured motorist coverage in the amount of $100,000.

As a result of the injuries sustained in the accident, plaintiff Allison incurred medical expenses in excess of $135,000. Plaintiff Allison's total damages for injuries sustained in the accident exceed the amount of automobile insurance coverage available to him. Following the accident, Allison made a demand on the Prudential Insurance Company for the limits of his underinsured motorist coverage. The Prudential Insurance Company subsequently paid to Allison underinsured motorist benefits in the amount of $100,000.

Defendant Wellmark has paid $126,067.17 in benefits for the medical expenses incurred by Allison as a result of the accident. The Plan contains the following provision with respect to subrogation:

> **# SUBROGATION**
> Once you receive benefits under this certificate arising from an illness or injury, we will assume any legal right you have to collect compensation, damages, or any other payment related to the illness or injury, including benefits from any of the following:
> **#** The responsible person's insurer.
> **#** Uninsured motorist coverage.
> **#** Underinsured motorist coverage
> **#** Other insurance coverage.
>
> You and your family agree to all of the following:
> **#** You will let us know about any potential claims or rights of recovery related to the illness or injury.
> **#** You will furnish any information and assistance we

> determine we will need to enforce our rights under this certificate.
> - You will do nothing to prejudice our rights and interests.
> - You will not compromise, settle, surrender, or release any claim or right of recovery described above, without getting our written permission.
> - You must reimburse us to the extent of benefit payments made under this certificate if payment is received from the other party or parties.
>
> You and your covered family member(s) must notify us if you have the potential right to receive payment from someone else. You must cooperate with us to ensure that our rights to subrogation are protected.
>
> We reserve the right to offset any amounts owed to us against any future claim settlement amounts.

Curries Company Alliance Select Health Benefits Certificate, Def.'s Ex. C at pp.46-47.

Wellmark first corresponded with Allison regarding its subrogation rights no later than August 30, 1999. In response to Wellmark's letter of August 30, 1999, Allison's counsel wrote to Wellmark on September 9, 1999. Alison's counsel's letter of September 9, 1999, does not mention the possibility of recovery under an underinsured motorist policy. On October 12, 1999, Wellmark wrote to Allison and his counsel. Wellmark advised both Allison and his counsel that Wellmark had a right of subrogation to the proceeds of underinsured motorist coverage and requested that Wellmark be kept informed of any settlement negotiations. On September 20, 1999, a check was issued to Allison from his automobile insurance carrier for his underinsured motorist coverage.

On October 19, 1999, Allison's counsel wrote to Wellmark, advising it that Allison had underinsured motorist coverage in the sum of $100,000. Allison's counsel did not inform Wellmark that the proceeds of that coverage had already been paid out. Allison's counsel indicated that it was his position that Allison's underinsured motorist coverage was

not subject to subrogation. He requested that Wellmark provide him with any Iowa legal authority supporting its position that its right of subrogation extended to Allison's underinsured motorist coverage. On November 16, 1999, Wellmark wrote to Allison's counsel to advise him of the amount of benefits paid by Wellmark as of that date. On December 20, 1999, Wellmark responded to Allison's counsel's request to be supplied with legal authority supporting its position that its right of subrogation extended to Allison's underinsured motorist coverage. There was no further correspondence between the parties prior to February 3, 2000, when plaintiff Allison filed the present case. On March 9, 2000, in a letter from Allison's counsel, Wellmark was advised for the first time that the proceeds of Allison's underinsured motorist coverage had been paid out to him.

II. LEGAL ANALYSIS

A. Standards For Summary Judgment

This court has considered in some detail the standards applicable to motions for summary judgment pursuant to FED. R. CIV. P. 56 in a number of prior decisions. *See, e.g., Swanson v. Van Otterloo*, 993 F. Supp. 1224, 1230-31 (N.D. Iowa 1998); *Dirks v. J.C. Robinson Seed Co.*, 980 F. Supp. 1303, 1305-07 (N.D. Iowa 1997); *Laird v. Stilwill*, 969 F. Supp. 1167, 1172-74 (N.D. Iowa 1997); *Rural Water Sys. #1 v. City of Sioux Ctr.*, 967 F. Supp. 1483, 1499-1501 (N.D. Iowa 1997), *aff'd in pertinent part*, 202 F.3d 1035 (8th Cir. 2000), *cert. denied*, 121 S. Ct. 61 (2000); *Tralon Corp. v. Cedarapids, Inc.*, 966 F. Supp. 812, 817-18 (N.D. Iowa 1997), *aff'd*, 205 F.3d 1347 (8th Cir. 2000) (Table op.); *Security State Bank v. Firstar Bank Milwaukee, N.A.*, 965 F. Supp. 1237, 1239-40 (N.D. Iowa 1997); *Lockhart v. Cedar Rapids Community Sch. Dist.*, 963 F. Supp. 805 (N.D. Iowa 1997). Thus, the court will not consider those standards in detail here. Suffice it to say that Rule 56 itself provides, in pertinent part, as follows:

> Rule 56. Summary Judgment

> (a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.
>
> (b) For Defending Party. A party against whom a claim . . . is asserted . . . may, at any time, move for summary judgment in the party's favor as to all or any part thereof.
>
> (c) Motions and Proceedings Thereon. . . . *The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.*

FED. R. CIV. P. 56(a)-(c) (emphasis added). Applying these standards, the trial judge's function at the summary judgment stage of the proceedings is not to weigh the evidence and determine the truth of the matter, but to determine whether there are genuine issues for trial. *Quick v. Donaldson Co.*, 90 F.3d 1372, 1376-77 (8th Cir. 1996); *Johnson v. Enron Corp.*, 906 F.2d 1234, 1237 (8th Cir. 1990). An issue of material fact is genuine if it has a real basis in the record. *Hartnagel v. Norman*, 953 F.2d 394 (8th Cir. 1992) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)). As to whether a factual dispute is "material," the Supreme Court has explained, "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Beyerbach v. Sears*, 49 F.3d 1324, 1326 (8th Cir. 1995); *Hartnagel*, 953 F.2d at 394. If a party fails to make a sufficient showing of an essential element of a claim with respect to which that party has the burden of proof, then the opposing party is "entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *In re Temporomandibular Joint (TMJ) Implants Prod. Liab. Litig.*, 113 F.3d 1484, 1492 (8th Cir.

1997). In reviewing the record, the court must view all the facts in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences that can be drawn from the facts. *See Matsushita Elec. Indus. Co.*, 475 U.S. at 587; *Quick*, 90 F.3d at 1377. With these standards in mind, the court turns to consideration of defendant Wellmark's Motion for Partial Summary Judgment.

B. Analysis Of Wellmark's Motion For Partial Summary Judgment

1. Subject matter jurisdiction

The court will initially take up plaintiff Allison's argument that the court lacks subject matter jurisdiction over this case. Thus, as a threshold issue, this court must determine whether removal was appropriate. If it was not, the court does not have subject matter jurisdiction and the court must deny as moot defendant Wellmark's Motion For Partial Summary Judgment. A civil action is removable if the district court has "original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States." 8 U.S.C. § 1441(b). It is uncontested that plaintiff Allison has pleaded only a state law claim for declaratory judgment. As the Eighth Circuit Court of Appeals has observed:

> Under the "well-pleaded complaint" rule, "a case may not be removed to federal court on the basis of a federal defense, including the defense of preemption, even if the defense is anticipated in the plaintiff's complaint." *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 14, 103 S. Ct. 2841, 77 L. Ed.2d 420 (1983). However, the well-pleaded complaint rule does not apply if Congress has evidenced an intent that federal law completely displace state law. "Once an area of state law has been completely pre-empted, any claim purportedly based on that pre-empted state law is considered, from its inception, a federal claim, and therefore arises under federal law." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 393, 107 S. Ct. 2425, 96 L. Ed.2d 318

(1987).

Lyons v. Philp Morris Inc., 225 F.3d 909, 912 (8th Cir. 2000). Thus, under application of the complete preemption doctrine, because state common law claims are deemed to be recast as federal claims, the preempted state law claims give rise to federal question jurisdiction, and, as a result, provide a basis for removal. *Id.*

In *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987), the Supreme Court held that the "complete preemption" exception applies to § 1132(a) of ERISA, 29 U.S.C. § 1132(a), which is ERISA's civil enforcement scheme. *Id.* at 67; *see Lyons*, 225 F.3d at 912. Thus, a state-law claim seeking the sort of relief provided for in § 1132(a) is essentially transformed into a claim which is "federal in character" and which will support removal jurisdiction. *Metropolitan Life Ins. Co.*, 481 U.S. at 67; *Lyons*, 225 F.3d at 912. The question, then, is whether plaintiff Allison's state-law claim for declaratory relief falls within the scope of ERISA § 1132(a). Thus, if Allison could have brought his claim under ERISA § 1132(a), the claim must be deemed to be completely preempted, and the court is correct to exercise jurisdiction here.

Section 1132(a), in relevant part, provides:

> A civil action may be brought--
> (1) by a participant or beneficiary--
> (A) for the relief provided for in subsection (c) of this section, or
> (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;
> (2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;
> (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

> (4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title . . .

29 U.S.C. §§ 1132(a)(1)-(4).

The Eighth Circuit Court of Appeals has held that a fiduciary's claim against a plan beneficiary for specific performance of the plan's subrogation clause falls within § 502(a)(3)'s exclusive jurisdiction over suits to enforce the terms of the plan. *See Southern Council of Indus. Workers v. Ford*, 83 F.3d 966, 969 (8th Cir.1996); *see also Lyons*, 225 F.3d at 912 (holding that plan fiduciaries' subrogation claims against tobacco companies for recovery of costs incurred due to tobacco related illnesses fells within § 502(a)(3)'s exclusive jurisdiction over suits to enforce the terms of the plan). In its *Ford* decision, the Eighth Circuit Court of Appeals considered whether subject matter jurisdiction existed over a claim by an ERISA plan to enforce the terms of a subrogation clause. *Ford*, 83 F.3d at 967-68. The Southern Council of Industrial Workers and the Southern Council of Industrial Workers Trust Fund ("Southern Council") maintained an employee benefit plan that provided health insurance. *Id.* at 967. The plan contained a subrogation clause providing that Southern Council would be subrogated to the rights of a beneficiary to receive or claim indemnification from a third party. *Id.* at 967-68. A beneficiary to the plan, Jacqueline Ford ("Ford") sustained injuries from a fall at a supermarket. After the plan paid $39,971.35 in medical benefits on Ford's behalf, Ford brought suit against the supermarket and eventually obtained a settlement of $150,000 from the supermarket's insurer. *Id.* at 968. Prior to the settlement, Ford and her attorney signed a subrogation agreement providing that they would reimburse the plan from the proceeds of any recovery for Ford's injuries. *Id.* After Ford and her attorney paid the fund only $10,000 in reimbursement for the benefits paid on Ford's behalf, Southern Council brought suit against Ford and her attorney seeking to recover the balance of the amounts it had paid on Ford's behalf. *Id.* The

district court ruled that there was no cognizable claim under ERISA for Southern Council's recovery of benefits paid on Ford's behalf. *Id.* The Eighth Circuit reversed, finding that Southern Council alleged an ERISA cause of action under § 1132(a)(3) to obtain equitable relief. *Id.* "Southern Council's allegation that Ford admittedly failed to reimburse it as required by the subrogation clause is a claim that Ford failed to comply with a term of the plan. Southern Council sought specific performance of Ford's obligation under the subrogation clause." *Id.* (citations omitted).

Although the *Ford* decision involved a plan's lawsuit against a plan beneficiary to enforce a plan's subrogation clause while this case involves a lawsuit brought by a plan beneficiary against the plan for declaratory relief that the plan has no right of subrogation to the proceeds of underinsured motorist coverage under its terms, the court concludes that this difference does not eliminate § 1132(a)(3) jurisdiction over this case. Here, plaintiff Allison is seeking to redress what he believes is a violation of the terms of the plan with respect to its right of subrogation. Such a claim falls squarely within the framework of §§ 1132(a)(1) and 1132(a)(3)(A).

Plaintiff Allison does not address the *Ford* decision in his moving papers. Rather, plaintiff Allison's argument that subject matter jurisdiction is lacking here is grounded on the Fifth Circuit Court of Appeals's recent decision in *Arana v. Oschner Health Plan, Inc.*, ___F.3d___, 2002 WL 1878714 (5th Cir. Aug. 15, 2002).

In *Arana*, a dependent of a plan beneficiary, Arana, was severely injured in an automobile accident. The defendant, Ochsner Health Plan, Inc. ("OHP") provided health benefits to participants and beneficiaries of the plan pursuant to a Group Health Services Agreement ("GHSA") between OHP and the employer. *Id.* ___F.3d___, 2002 WL 1878714 at *1. After the automobile accident, Arana's health care providers submitted to OHP claims for services rendered to Arana, and OHP paid approximately $180,000 in health benefits for treatment of Arana's accident-related injuries. *Id.* Four automobile insurance

policies provided coverage for the accident. Arana subsequently settled claims under the four policies for a total of $1,112,500. After receiving notification from OHP that claimed a contractual right to reimbursement of the health benefits it had paid on Arana's behalf, Arana filed suit against OHP in the Louisiana state district court. *Id.* ___F.3d___, 2002 WL 1878714 at *2. In his state court petition, Arana requested a declaratory judgment "requiring OHP to release its notice of lien and to withdraw and release OHP's subrogation, reimbursement, and assignment claims" against him. Arana asserted that such claims violated La. Rev. Stat. 22:663. OHP removed Arana's lawsuit to the Eastern District of Louisiana, on the grounds that the petition asserts claims that were completely preempted by ERISA. OHP then filed a motion to dismiss or, alternatively, a motion for summary judgment. In response to OHP's motion to dismiss, Arana asserted that subject matter jurisdiction was lacking. *Id.* ___F.3d___, 2002 WL 1878714 at *2, n.4.

The district court concluded that Arana's petition stated a claim for benefits under 29 U.S.C. § 1132(a) that was completely preempted by ERISA. In reversing, the Fifth Circuit Court of Appeals concluded that Arana's claim was not one for benefits under § 1132(a). *Id.* ___F.3d___, 2002 WL 1878714 at *4. The court of appeals also concluded that Arana's cause of action under La. Rev. Stat. 22:663 was not within the scope of § 1132(a) as an action "to enforce his rights under the terms of the plan." *Id.* In reaching this conclusion, the court of appeals noted that, because the terms of the plan were not of record, it was not persuaded that Arana was seeking a declaration that Louisiana state law controlled over plan provisions. The court went on to observe:

> Moreover, assuming arguendo that the terms of the GHSA are properly considered to be the terms of the LeCler plan, such an assumption still does not justify characterizing Arana's claim as one to enforce the plan's terms. Arana does not dispute that the GHSA affords OHP the subrogation and reimbursement rights it claims. Arana in fact concedes that he would owe a portion of his tort recovery to OHP if the terms of the GHSA

> were enforced, but he argues that the relevant provisions in the GHSA are illegal by operation of 22:663. Although Arana's suit to enforce state law over the terms of the plan may be "akin" to a suit to enforce the terms of the plan itself, the fact that a claim is akin to a cause of action authorized under section 502(a) is not enough to support a federal claim under ERISA.

Id. ___F.3d___, 2002 WL 1878714 at *5.

The *Arana* decision is distinguishable from the present case. In contrast to the petition involved in *Arana*, plaintiff Allison's petition does not assert that Wellmark's right to subrogation under the plan is unenforceable under state law. Instead, plaintiff Allison asserts that the plan does not provide for subrogation, and that the plan "is ambiguous in its terms as to what, if any, claims the Defendant could legally claim under the facts of this case." Complaint at ¶¶ 8-9. Moreover, plaintiff Allison expressly sought "a declaratory judgment construing the insurance policy of the defendant and declaring that said defendant has no subrogation rights under the underinsured benefits of Plaintiff's automobile policy." Complaint at p. 2. Thus, Allison, unlike the plaintiff in *Arana*, is seeking an interpretation of the plan and a declaration of his rights under the plan. Such a prayer for relief falls squarely within the scope of §§ 1132(a)(1) and 1132(a)(3)(A). Therefore, the court concludes that plaintiff Allison's claims are completely preempted by ERISA and the court has subject matter jurisdiction to hear this matter.

2. Constructive trust

The court turns next to consider whether a constructive trust is available to protect the plan where a plan's beneficiary has obtained funds which are subject to subrogation. The issue of whether a constructive trust is available under the facts of this case must be determined by application of federal common law. The federal common law in turn, may draw guidance from analogous state law. *See Wegner v. Standard Ins. Co.*, 129 F.3d 814, 818 (5th Cir. 1997); *Jones v. Georgia Pacific Corp.*, 90 F.3d 114, 116 (5th Cir.1996); *Todd*

v. AIG Life Ins. Co., 47 F.3d 1448, 1451 (5th Cir. 1995); *Brandon v. Travelers Ins. Co.*, 18 F.3d 1321, 1325 (5th Cir. 1994); *Heasley v. Belden & Blake Corp.*, 2 F.3d 1249, 1257 (3d Cir. 1993); *McMillan v. Parrott*, 913 F.2d 310, 311 (6th Cir. 1990). A constructive trust is "an equitable remedy compelling a person who has property to which he is not justly entitled to transfer it to the person entitled." *United States v. Pegg*, 782 F.2d 1498, 1499 (9th Cir. 1986). A constructive trust is among the remedies available to a court of equity and is therefore available under 29 U.S.C. § 1132(a)(3), as means by which to compel restitution to an ERISA plan. *See Mertens v. Hewitt Assocs.*, 508 U.S. 248, 250 (1993); *Amalgamated Clothing & Textile Workers v. Murdock*, 861 F.2d 1406, 1413 (9th Cir. 1988).

Under Iowa law, a constructive trust is an equitable remedy and is appropriate in three instances: actual fraud, constructive fraud, or equitable principles other than fraud. *See Koster v. City of Davenport*, 183 F.3d 767, 769 (8th Cir. 1999); *Berger v. Cas' Feed Store, Inc.*, 577 N.W.2d 631, 632 (Iowa 1998); *In re Estate of Peck*, 497 N.W.2d 889, 890 (Iowa 1993); *Slocum v. Hammond*, 346 N.W.2d 485, 493 (Iowa 1984); *Regal Ins. Co. v. Summit Guar. Corp.*, 324 N.W.2d 697, 704 (Iowa 1982); *Loschen v. Clark*, 256 Iowa 413, 419, 127 N.W.2d 600, 603 (1964); *see also In re Marriage of Jones*, 451 N.W.2d 25, 26 (Iowa Ct. App. 1989). "Other circumstances supporting imposition of equitable principles include bad faith, duress, coercion, undue influence, abuse of confidence, or any form of unconscionable conduct or questionable means by which one obtains the legal right to property which they should not in equity and good conscience hold." *In re Estate of Welch*, 534 N.W.2d 109, 111 (Iowa Ct. App. 1995). "The party who seeks the imposition of a constructive trust must establish the right by clear, convincing, and satisfactory evidence." *Neimann v. Butterfield*, 551 N.W.2d 652, 654 (Iowa Ct. App. 1996); *see Slocum*, 346 N.W.2d at 493; *In re Estate of Welch*, 534 N.W.2d at 111; *James v. James*, 252 Iowa 326, 330, 105 N.W.2d 498 (1960); *see also In re Estate of Farrell*, 461 N.W.2d 360, 361 (Iowa Ct. App. 1990).

Wellmark concedes that Allison is not guilty of actual or constructive fraud under the first two grounds. Rather, it argues that the third ground is applicable because it is inequitable for Allison to retain the proceeds of the underinsured motorist coverage in light of the plan's subrogation provision and this court's prior determination that Wellmark is entitled to the underinsured motorist coverage proceeds under the subrogation provision. Given that the court has previously determined that Wellmark is entitled to the underinsured motorist coverage proceeds pursuant to the plan's subrogation provision, the court concludes that equity requires the imposition of a constructive trust on the insurance proceeds at issue in this case. Therefore, the court grants defendant Wellmark's Motion For Partial Summary Judgment and orders that the underinsured motorist coverage proceeds are to be held in constructive trust for Wellmark.

C. Allison's Motion To Remand

In his motion to remand, Allsion asserts that this matter should be remanded to state court because this court lacks subject matter jurisdiction. Allison reiterates the jurisdictional arguments he raised in his resistance to Wellmark's motion for partial summary judgment. For the reasons discussed above, the court concludes that plaintiff Allison's claims are completely preempted by ERISA, and, thus, the court has subject matter jurisdiction here. Therefore, plaintiff Allison's motion to remand is denied.

III. CONCLUSION

The court concludes that Allison's claims for relief fall within the scope of §§ 1132(a)(1) and 1132(a)(3)(A). Therefore, the court concludes that plaintiff Allison's claims are completely preempted by ERISA, and the court has subject matter jurisdiction over the case. The court further concludes that, in light of the fact that this court previously determined that Wellmark is entitled to the underinsured motorist coverage proceeds

pursuant to the plan's subrogation provision, equity requires the imposition of a constructive trust on the insurance proceeds at issue in this case. Therefore, the court grants defendant Wellmark's Motion For Partial Summary Judgment and orders that the underinsured motorist coverage proceeds are to be held in constructive trust for Wellmark.

Because the court concludes that it has subject matter jurisdiction over this matter, Allison's motion to remand is denied.

It appears to the court that the only matter left unresolved in this litigation is the question of whether Wellmark owes Allison a reasonable attorney's fee in connection with his recovery of the underinsured motorist proceeds at issue in this case. The parties are urged to attempt to resolve this issue amongst themselves in order to expedite the entry of a final judgement and the filing of any appeals the parties may wish to take in this case. To that end, the parties are directed to confer within the next month in an attempt to resolve the fee issue amongst themselves. The parties shall file a status report **not later than November 15, 2002**, addressing whether the parties have been able to resolve the fee issue and the need for the court to hold a bench trial on the fee issue.

IT IS SO ORDERED.

DATED this 15th day of October, 2002.

Mark W. Bennett

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA